IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 19146 of 2004
Date of decision: 15.1.2007

Vivek Chand Sharma and others Petitioners

Versus

Union of India and others ...Respondents.

CORAM:- HON'BLE MR. JUSTICE K.S.GAREWAL
HON'BLE MR. JUSTICE AJAI LAMBA

Present: Mr. Shailender Jain, Advocate,
for the petitioners.

Mr. RS Kundu, Additional Advocate General,
Haryana No. 2 to 5.

Mr. Amandeep Singh, Advocate, for
respondent No.6.

Mr. Deepak Balyan Advocate, for
Mr. Gaurav M. Liberhan, Advocate, for
respondent No. 9.

K.S.GAREWAL, J.

The petitioners are Vivek Chand Sharma, his wife and their three children. The petitioners are seeking quashing of the acquisition of their residential house, Smriti Sthal, Temple, Orchard and other construction, which have been acquired by the State of Haryana for development and utilization as residential/commercial area of Sector 9, Jhajjar. The notification under Section 4 of the Land Acquisition Act 1894

(hereinafter referred to as **the Act)** was published on August 14, 2003 (Annexure P/10). This was followed by a declaration under Section 6 which was published on August 10, 2004 (Annexure P/24).

The petitioners have pleaded that they were owners of 99 kanals 9 marlas of the land situated in village Jhajjar. The property was inherited by them from their ancestors and was thus ancestral property. The land was situated on the Jhajjar-Bahadurgarh-Delhi road and had very good potential. The petitioners described in detail the extent of land which was covered under the residential house by giving the field numbers. Similarly, the land under the security room, Smriti Sthal of the fore-father of Chander Bal, land covered under Sham Mandir, water tank, well, cattle shed, generator room and fruit bearing orchard of amrood and jamuns. There was also an orchard of ber, amla, anar as well as a fish pond on the property.

The petitioners pleaded that petitioner 1 Vivek Chand Sharma was a former Vice-Chancellor of Maharishi Dayanand University, Rohtak, from 1994 to1997 and was, at the time of filing of the petition, Vice President of the Haryana Pradesh Congress Committee. The family was a renowned family of the area and enjoyed high status. Late Chander Bal whose samadi existed on the land was son of a well known freedom fighter Narender Singh.

After the notification under Section 4 of the Act, the petitioners lodged their objection petition on September 1, 2003, copy of which has been annexed as Annexure P/13. The objections ran into many pages, but the primary objection was that in case of Jhajjar, the draft development plan had not been finalised and in the absence of the plan, the development could not be carried out. Secondly, within the acquired land there was a compact

block which consisted of some constructed portion, a place for worship and a memorial of the petitioners' fore-father as well as a fruit orchard. The petitioners had a legitimate expectation that the above areas would be released from acquisition. This was also the declared policy of the Government of Haryana, who had been releasing the constructed portions from acquisition, with some area around the construction for the beneficial enjoyment of the building.

According to the petitioners, a notice was received by them from the Land Acquisition Collector in respect of the hearing of their objection dated September 1, 2003. The objectors were required to be present on January 13, 2004 for producing evidence in support of their objections. In response to this notice, the petitioners' filed an application under Section 14 of the Act seeking to summon nine witnesses to prove and substantiate their objections.

No order was passed on this application but the petitioners received another notice calling upon them to appear before the Collector on April 26, 2004 at 3.30 p.m. The Collector also notified petitioner 1 that the acquired land shall be inspected by him on April 26, 2004 at 1 p.m. The petitioners contend that these notices were received by them at 3.30 p.m. on April 26, 2004. According to the petitioners, the Land Acquisition Collector had himself come to their residence at about 3.30 p.m. and handed over the notice but he did not carry out any spot inspection. He merely recorded the statement of petitioner 1. No orders were passed on the objections and no proper opportunity of hearing was granted to the petitioners on that day or on any date thereafter.

The main ground to challenge the acquisition is that the

petitioners' objections under Section 5-A of the Act were not properly considered and the petitioners did not get an opportunity to lead evidence.

Land Acquisition Collector filed a reply to the petition on his behalf and on behalf of respondents 2 and 4 as well. The Collector pleaded that the petitioners had indeed filed objections under Section 5-A of the Act. Petitioner 1 had appeared before the Collector himself and his statement was recorded. The Collector had given full opportunity of personal hearing to the landowners and interested persons who had filed objections. After hearing the objections, the Collector sent his report on the individual objections. Joint Site Inspection Committee also sent its report to the Government. After considering the report of the Collector and Joint Site Inspection Committee's report, land measuring 1 kanal (605 square yards) was left out from the acquisition, whereas the remaining land was included in the declaration under Section 6 of the Act.

The petitioners' entire property was covered under the Section 4 notification. It was a substantial tract of land of about 100 kanals (or 12.5 acres). Out of this area, about 2-1/2 acres was part of the residential area while remaining 10 acres was the orchard. The petitioners' main objection was that at least the house, which was bounded by a wall and which consisted of Smriti Sthal, temple cattle sheds etc. should have been released from acquisition. The respondents had only released an area of 1 kanal (605 square yards or 1/8th in acre). The grievance of the petitioners was that their objections have not been properly considered, they had been denied an opportunity to lead evidence. Notice for presenting evidence was served on them on the afternoon of the day which the Collector had fixed for hearing objections. The Collector had come to the petitioners' house and recorded

the statement of petitioner 1, but no evidence was taken or permitted to be led.

Learned counsel for the petitioners relied upon Hindustan Petroleum Corpn. Limited Versus Darius Shapur Chenai and others 2005 (7) Supreme Court Cases 627 to argue that Section 5-A confers a valuable right in favour of the person whose land was sought to be acquired. Hearing given to the person must be an effective one and not a mere formality. Formation of opinion as regards the suitability of the land for acquisition must be preceded by application of mind, consideration of relevant factors and rejection of irrelevant ones.

The circumstances of the above case were quite different, therefore, the precedent laid down by the Supreme Court may not be applicable to the petitioners' case. In Hindustan Petroleum Corporation Limited' case, Caltex (India) Limited had been leased the acquired land later Hindustan Petroleum Corporation Limited (HPCL) became the lessee. The lease deed, after renewal, finally ended in 1979. Thereupon the owners or the lessors filed a suit for eviction of the lessee. The suit was decreed and the appeal was also dismissed. Thereafter, HPCL sought acquisition of the said land under the provisions of the Land Acquisition Act. Notification was issued under Section 4 of the Act to which the lessors/landowners objected but the declaration under Section 6 of the Act was issued soon thereafter. The acquisition was challenged by the landowners. The writ petition was allowed by the High Court. Appeal was filed and the matter was got remitted back to the High Court. However, the High Court again decided in favour of the landowners. Before the High Court, the government had not been able to support the acquisition, resultantly, the

notification was quashed. In HPCL's case there had been complete non application of mind, the State had been unable to produce the record of the acquisition. Therefore, under these circumstances the Supreme Court held as under:-

> "The Court in a case, where there has been total non-compliance or substantial non-compliance with the provisions of Section 5-A of the Act, cannot fold its hands and refuse to grant a relief to the writ petitioner. When the decision-making process itself is in question, the power of judicial review can be exercised by the court in the event the order impugned suffers from well-known principles viz illegality, irrationality and procedural impropriety. Moreover, when a statutory authority exercises such enormous power it must be done in a fair and reasonable manner."

HPCL' s case has clearly laid down the modalities for hearing objections. It is easy to see why the petitioners are objecting to the acquisition. There was a thriving farm and an orchard on the property. The petitioners had their house, their fore-fathers' samadi and a temple on the land. But on the other hand, there was a great need to develop Jhajjar in a planned and systematic way by acquiring large swathes of agricultural land and developing it in a planned manner before it got consumed by haphazard and unplanned expansion of Jhajjar. Release of the petitioners' farm from acquisition would have resulted in similarly situated persons also asking for release of their lands and the entire scheme or development of the area as commercial and residential area would have collapsed. It is an unfortunate aspect of the development that farmers have to lose their land for the

growth of cities and towns and also occasionally for setting up factories. This is a very big question which is faced by State Governments in India but we need not delve into it in this case.

1 kanal of petitioners' land has been released from acquisition, obviously because their house exists on this particular parcel of land . The petitioners' lost their entire orchard and a large part of the land attached to their house which was covered by Smriti Sthal, temple, cattle sheds etc. The petitioners cannot complain that they have been discriminated because the site plan of Jhajjar (Annexure P10/A) reveals that farms of many other landowners had been acquired but houses had been released from acquisition. The Collector's reports are Annexures P/22, P/23 and P/23A. Annexure P/22 shows that there were at least 110 built-up properties in the acquired land. The field number, covered area, total area, class of construction, present use and sketch of each property has been given in Annexure P/22. The petitioners' property is entered at serial 24. It consisted of field 22 (covered area 2024 square feet, total area 69696 square feet, class of construction **'A'** present use-residence). Field 26 has covered area of 2700 square feet, class of construction **'B'** and it was used as Mandir/well. Field 20 has covered area of 300 square feet of **'C'** class construction used as a shed. Field 19 has covered area of 100 square feet used as a Samadi. What is interesting is that the Samadi is in one corner of the property. If the Samadi is released from acquisition, a large chunk of open acquired land would also got released, therefore, it is obvious why the samadi was included in the acquisition. Similarly cattle shed etc. was also included in the acquisition. Only the area of the kothi and the temple was recommended for release and with regard to the remaining the Government

was asked to take the decision. Report regarding petitioners' property is at Annexure P/23. It is obvious that on the basis of this report the petitioners' residential house has been released from acquisition. The action of the respondents was on the basis of petitioners' objection and spot inspection, which was carried out in their presence.

We are convinced that the petitioners received a proper hearing before their objections were decided. The guidelines laid down in HPCL's case were not dis-regarded. The petitioners were present when the spot was inspected and were able to point out the exact location of the various structures on the acquired land. The Collector had also been able to himself examine the structures in detail before submitting his report. Therefore, we find that the procedure prescribed by the Act was followed and the petitioners were heard regarding their objections. We find no merits in this petition. Dismissed.

(K.S. GAREWAL)
JUDGE

15.1.2007 **(AJAI LAMBA)**
prem **JUDGE**